SUPREME COURT OF THE UNITED STATES.

No. 315.

THE UNITED STATES, APPELLANTS,

vs.

THE STEAMER VIGO, HER TACKLE, APPAREL, &c.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

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1 *Libel of information.—Filed June 20, 1865.*

To the honorable the judges of the circuit court of the United States for the sixth judicial circuit and eastern district of Louisiana:

The libel of information of Rufus Waples, attorney of the United States for the eastern district of Louisiana, who prosecutes for the said United States in this behalf, and being here present in court, in his own proper person, in the name and behalf of the said United States of America, and Charles Black, sr., informant, against the steamer Vigo, tackle, apparel, and furniture, &c., hereinafter described, and against all persons intervening for their interest therein, in a case of seizure and forfeiture, alleges, propounds, and declares as follows:

I. That Cuthbert Bullitt, esq., marshal of the United States for the said district, under written authority given him by the said attorney, in compliance with instructions issued by the Attorney General of the United States to the district attorneys thereof, and by virtue of the act of Congress approved on the sixth day of August, in the year of our Lord one thousand eight hundred and sixty-one, entitled "An act to confiscate property used for insurrectionary purposes," heretofore, that is to say, on the the 16th day June, in the year one thousand eight hundred and sixty-five, seized as forfeited to the United States, at New Orleans, within said district, and within the jurisdiction of this court, the steamer Vigo, her tackle, apparel, and furniture, and machinery.

2 II. That by the act of the Congress of the United States, approved August 6, 1861, entitled "An act to confiscate property used for insurrectionary purposes," it was provided, "that if, during the present or any future insurrection against the government of the United States, after the President of the United States shall have declared, by proclamation, that the laws of the United States are opposed, and the execution thereof obstructed by combinations too powerful to be suppressed by the ordinary course of judicial proceedings, or by the power vested in the marshals by law, any person or persons, his, her, or their agent, attorney, or employee, shall purchase or acquire, sell or give, any property of whatever kind or description, with intent to employ the same, or suffer the same to be used or employed, in aiding, abetting, or promoting such rebellion or resistance to the laws, or any person or persons engaged therein; or if any person or persons, being the owner or owners of any such property, shall knowingly use or employ, or consent to the use or employment of the same as aforesaid, all such property is hereby declared to be lawful subject of prize and capture wherever found; and it shall be the duty of the President of the United States to cause the same to be seized, confiscated, and condemned."

III. That the President of the United States did, on the 15th of April, 1861, declare by proclamation, "that the laws of the United States are opposed and the execution thereof obstructed by combinations too powerful to be suppressed by the ordinary course of judicial proceedings, or by the power vested in the marshals by law;" and that on the 16th of August, 1861, he did reiterate said proclamation,

and did declare that "such insurrection" still existed and had not been suppressed.

IV. 1. That the property herein above described was used and employed knowingly by the owner or owners thereof, in aiding, abetting, and promoting the said insurrection and resistance to the laws, within the meaning of the said act of Congress, after the approval of the said act, and after the public proclamations of the President above mentioned, and after the 16th day of August, 1861, by being used as a transport by the so-called confederate government, for the transportation of troops of the so-called confederacy and in transporting ammunition and supplies to the said troops.

2. That the property herein described was used and employed knowingly by the owner or owners thereof, in aiding and abetting persons engaged in the said insurrection and resistance to the laws, within the meaning of the said act of Congress, after the approval of said act, and after the public proclamations of the President above mentioned, and after the 16th day of August, 1861, by being used in the transportation of troops of the so-called confederate States and in transporting ammunition and supplies for the so-called confederate troops in insurrection against the government of the United States.

3. That the said property was purchased and acquired, and sold and given, by the owner or owners thereof, and by his, her, or their agent or employee, with intent to use or employ the same for the purpose of aiding, abetting, and promoting the said insurrection and resistance to the laws, after the approval of said act, and after the public proclamations above mentioned, and after the 16th day of August, 1861, by being used in the transportation of troops of the so-called confederate government, in armed rebellion against the government of the United States, and in the transportation of munitions of war and supplies for the said confederate troops.

4. That the owner or owners of the said property did knowingly consent to the use or employment of it for the purpose of aiding and abetting and promoting said insurrection and resistance to the laws, and of aiding, abetting, and promoting persons engaged therein, after the approval of said act, and after the proclamations above mentioned, and after the 16th day of August, 1861, by being used as above set forth.

5. That the owner or owners of said proporty, his, her, or their agent or employee, did suffer said property to be used or employed in aiding, abetting, or promoting the insurrection proclaimed by the President as aforesaid, and in aiding, abetting, or promoting a person or persons engaged in said insurrection, after the approval of act above mentioned, and after the proclamation of the President, duly made public on the 16th day of August, 1861, by permiting its use as aforesaid.

V. That by reason of the premises the property herein described became and was forfeited to the United States, and ought to be confiscated and condemned to the use of the said United States as enemy property.

Wherefore, the said attorney, in the name and behalf of the United States of America, prays that process of monition may issue against the said property and the owner or owners thereof, and against all persons interested or claiming an interest therein, warning them at some early day, to be named therein, to appear and answer
3 this libel of information; and that an order of publication may be made in the usual form; and that all due proceedings being had, this honorable court may be pleased to decree for the condemnation and forfeiture of the said property to the use and ownership of the said United States, and of Charles Black, sr., informant. And he prays for such further relief as the court is competent to give in the premises.

(Signed) RUFUS WAPLES,
U. S. Att'y for Eastern Dist. La.

Filed June 20th, 1865.

4 *Order for publication.*

United States circuit court for the sixth judicial circuit and eastern district of Louisiana.

UNITED STATES
vs.
THE STEAMER VIGO, her tackle, apparel, and furniture. } No. 3,592.

Whereas the steamer Vigo, tackle, apparel, and furniture, &c., described in the libel filed by the district attorney, and now of record in this court, and all the right, title, and interest therein, has been seized by the marshal of the United States for the eastern district of Louisiana, by virtue of an act of Congress, approved on the sixth day of August, in the year of our Lord one thousand eight hundred and sixty-one, entitled "An act to confiscate property used for insurrectionary purposes;" and whereas the United States attorney for the eastern district of Louisiana, did, on this 20th day of June, A. D. 1865, file a libel of information in this court praying the condemnation of said property under the act aforesaid, and that process of monition issue against the owner and owners of said property, and all persons interested or claiming an interest therein, warning them at some early day to appear and answer said information.

It is therefore, on this 27th June, in the year of our Lord eighteen hundred and sixty-five, ordered that notice be given to the owner and owners of said property, and all persons interested or claiming an interest therein, to appear and answer this information on the 17th day of July, 1865, and show cause, if any they have, why said property and real estate and the right, title, and interest therein should not be condemned and sold according to law; and that notice be given by posting a copy of this order upon the front door of the court house of the district, and by publication in the Times newspaper twice a week previous to said 17th day of July, A. D. 1865, the first publication to be on or before the 3d July, 1865.

New Orleans, June 27, 1865.

(Signed) E. H. DURELL, *Judge.*

5 *Warrant.*

The President of the United States of America to the marshal of the eastern district of Louisiana, or to his lawful deputy, greeting:

You are hereby commanded forthwith to seize, and into your possession take, the steamer Vigo, tackle, apparel, and furniture, &c., described in the libel filed by the district attorney. now of record in this court, and now libelled by the United States for the causes set forth in the libel pending in the circuit court of the United States for the sixth judicial circuit and eastern district of Louisiana; that you do cite and admonish the owner or owners, and all and every other person or persons having or pretending to have, any right, title, or interest, in or to the same, to be and appear before a circuit court of the United States, for the district aforesaid, to be holden at the city of New Orleans, on or before the third Monday from the service hereof, to show cause, if any they have or can, why the said property should not be condemned and sold agreeably to the prayer of the libellant; and how you have executed this warrant, that you make return according to law.

Witness the honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this 27th day of June, A. D. 1865, and 89th year of the independence of the United States.

(Signed) F. B. VINOT, *Dep'y Clerk.* [SEAL.]

6 *Marshal's return.*

Received June 30, 1865, and having seized the within-named steamboat on the authority of a previous writ, I posted a copy of this warrant, the libel, and judge's order on the door of the court house, and published the monition in the N. O. Times, a daily paper printed in New Orleans, on the 1st, 6th, 11th, and 15th July, 1865.

Returned July 17th, 1865.

(Signed) A. BAUDOUIN, *Chief Deputy.*

7 *Monition.*

UNITED STATES *vs.* THE STEAMER VIGO, her tackle, apparel, and furniture.	No. 3,592.

In the United States circuit court for the sixth circuit and eastern district of Louisiana.

In obedience to an admiralty warrant to me directed in the above-entitled suit, I have seized and taken into my possession the steamboat Vigo, her tackle, apparel, and furniture, now libelled by the United States of America for the causes set forth in the libel now pending in the circuit court of the United States. And I do hereby cite and admonish the owner or owners thereof, and all and every person or persons having or pretending to have any right, title, or interest in or to the same, to be and appear at a circuit court of the

United States for the district aforesaid, to be holden at the city of New Orleans, on or before the third Monday from the date hereof, to show cause, if any they have or can, why the said steamboat,
8 her tackle, apparel, etc., should not be condemned as forfeited to the United States, and be sold agreeably to the prayer of libellants, and the proceeds thereof be distributed according to law.

United States marshal's office, New Orleans, 30th day of June, 1865.

(Signed) CUTHBERT BULLITT,
U. S. Marshal.

Answer of claimants.—Filed July 22d, 1865.

UNITED STATES
vs.
THE STEAMER VIGO, her tackle, apparel, and furniture. } No. 3,592.

United States circuit court, sixth circuit, eastern district of Louisiana.

The answer of Russell B. Roberts, agent of Thomas W. Roberts, the owner and claimant of the three-fourths (¾) part of the steamer Vigo, and James E. and Harlow J. Phelps, the owners and claimants of the remaining one-fourth (¼) of said steamer Vigo,
9 to the libel of the United States of America against the said steamer, her tackle, apparel, and furniture.

And now the said Russell B. Roberts, of Shreveport, Louisiana, the agent of Thomas W. Roberts, a loyal citizen of the United States, the owner of ¾ of said steamer Vigo, and James E. and Harlow J. Phelps, the latter resident of this city, and the former a resident of Shreveport, Louisiana, and loyal citizens of the United States, owners of the other ¼ of said steamer Vigo, and for answer to the libel of the United States of America against said steamer doth allege and propound as follows:

First. That said Thomas W. Roberts and James E. and Harlow J. Phelps are the true and bona fide owners of the said steamer Vigo, and that no other person is the owner thereof; and that he, the said Russell B. Roberts, is duly authorized by said Thomas W. Roberts (this reference approved) to put in a claim on his behalf for his interest to the said steamer in this suit.

Second. That the matters stated in the first article of said libel in regard to the written instructions given to the marshal and the authority for giving the same these respondents are informed
10 and believes to be correctly stated. These respondents admit that said steamer has been seized by the marshal as alleged in said 1st article.

Third. These respondents are informed and believe the matters and things alleged in the II and III articles of said libel are true and correct.

Fourth. That the matters and things alleged and propounded in the 1V article of said libel and the subdivisions 1, 2, 3, 4, and 5 thereof are untruly, erroneously, and falsely stated, and the truth is as hereinafter states, viz:

That said steamer Vigo was occasionally used for the purpose of carrying supplies and provisions for the use of the confederate forces, and on two occasions she was used for the purpose of carrying confederate troops during the existence of the late rebellion, but said steamer was never so used or employed as above stated with the consent of the owners thereof or their agent; that such use and employment was against their will and consent of the owners thereof
11 and their agent, and the said use and employment of said steamer was brought about by force and compulsion on the part of the so-called confederate government and against the will and desire of the owners of said steamer and their agent, and neither the owners thereof nor their agent was in any manner responsible for the said use and employment of said steamer.

That all the matters and things alleged and propounded in the said IV article and the subdivisions thereof different from the matters and things alleged and propounded in this article, or tending in any manner to the forfeiture of said steamer to the use and benefit of the United States, are incorrectly, untrue, and falsely stated, alleged, and propounded; that said steamer was never forfeited to the United States, and ought not to be confiscated to the use thereof as the property of an enemy.

Wherefore these respondents pray this honorable court would be pleased to pronounce against the libel aforesaid, and to condemn the libellant in costs, and otherwise right and justice to administer in the premises.

(Signed) MILES TAYLOR,
Proctor for Claimant.

12 (Signed) R. B. ROBERTS.
(Signed) HARLOW J. PHELPS.
(Signed) JAMES E. PHELPS.

Sworn to and subscribed before me, this 22d July, 1865.
(Signed) F. B. VINOT, *D'y Clerk.*

Bond for costs.—Filed July 22d, 1865.

UNITED STATES OF AMERICA, *Eastern District of Louisiana, to wit, ss:*

Personally appearing before me, the undersigned United States commissioner for the eastern district of Louisiana aforesaid, R. B. Roberts, agt. of Thos. W. Roberts, as principal, and Edward Conery, as surety, do hereby acknowledge themselves jointly and severally to be indebted unto the United States in the full sum of two hundred and fifty dolls., lawful money of the United States, to be levied of their goods, chattels, lands, and tenements, the use of the said United States, and for the payment whereof they jointly and severally bind themselves, their heirs, executors, and administrators, firmly by these presents.

Whereas in the matter of the United States *vs.* the steamer Vigo, No. 3,592 of the docket of the circuit court of the United States for the eastern district of Louisiana, a libel of information has been filed on behalf of the United States, this obligation to be null and void on condition that the said R. B. Roberts, agt., shall abide by the final decree rendered in the cause, and pay all such costs, expenses, and damages as shall be awarded by the court upon the final decree, whether it is rendered in the original or appellate court; otherwise this obligation to remain in full force and virtue.

(Signed) R. B. ROBERTS. [L. S.]
(Signed) ED. CONERY. [L. S.]

Signed and sealed, at the city of New Orleans, this 22 day of July, 1865, in the presence of—

(Signed) CHS. CLAIBORNE, [SEAL.]
U. S. Commissioner in and for the Eastern District of Louisiana.

13 *Motion and order to bond.—From minutes December* 20, 1865.

Circuit court of the United States, sixth circuit and eastern district of Louisiana, November term, 1865.

NEW ORLEANS, *Wednesday, Dec.* 20, 1865.

Court met pursuant to adjournment. Present: Hon. Edw. H. Durell, district judge.

UNITED STATES
vs.
THE STEAMER VIGO, her tackle, apparel, and furniture. } No. 3,592.

On motion of Miles Taylor, proctor for claimants, and on showing to the court that after said steamboat was seized by the marshal in the above-entitled suit, she was released by the military authorities of this district and employed in carrying pork and other provisions and supplies up Red river for the use of the army of the United States, and that those having said steamboat in charge, believing that she had been bonded, on the same terms as the Nina
14 Simmes, had said steamboat Vigo thoroughly repaired at an expense of about fourteen thousand dollars; that within the last few days it has been discovered that said boat Vigo had never been bonded in said suit, and on further representing that it would not be equitable and just on the part of the United States government in case said steamboat Vigo should be condemned to confiscate and condemn said repairs made to said steamboat Vigo, since her seizure in this suit on the 30th of June, 1865; and on further showing that claimants are desirous of bonding said boat Vigo by giving bond with good and solvent security for one-half over and above the value of said steamboat Vigo as she stood on the day of her seizure in this suit, viz., the 30th June, 1865, conditioned that should the judgment be averse to the claimants, they may satisfy it by paying the

amount of such appraisement promptly into court, and failure to do so shall leave the steamboat Vigo liable as though such condition was not contained in the bond—

15 It is ordered by the court that the steamboat Vigo, her tackle, apparel, and furniture, be delivered to the claimants upon their furnishing bond with good and solvent security, to be approved by Charles Claiborne, esqr., United States commissioner, conditioned that should the claimants be cast in this suit and the steamboat Vigo, her tackle, apparel, and furniture, be condemned to the libellants, the said claimants and their sureties shall satisfy the judgment by paying promptly into court the amount of the appraisement, and in default of which the said steamboat Vigo, her tackle, apparel, and furniture, shall be delivered up to satisfy the judgment, and the bond in other respects shall be in the usual form.

It is further ordered that the value of the steamboat Vigo, her tackle, apparel, and furniture, as the same stood on the day of her seizure in the above-entitled cause, viz: the 30th of June, 1865, be ascertained by appraisement, and that such appraisement be made by H. J. Heartt and Richard Swain, the claimants paying costs of such appraisements.

16 *Notice to appraisers.—Issued December 20th*, 1865.

United States circuit court, eastern district of Louisiana.

UNITED STATES *vs.* STEAMER VIGO, her tackle, apparel, and furniture.	No. 3,592.

To H. G. Heartt and Richard Swain:

Take notice that you have been this day appointed appraiser for the purpose of ascertaining the value of the property libelled in this case, as the same stood on the 30th June, 1865, and you are to file the report of your appraisement within the shortest possible delay.

By order of the court.

New Orleans, December 20th, 1865.

(Signed) B. F. VINOT, *D'y Clerk.* [SEAL.]

Marshal's return.

17 Received December 20th, 1865, and on the same day, month, and year served a copy of the within notice on H. G. Heartt, one of the appraisers named herein personally.

December 20th, 1865.

(Signed) M. EGAN,
D'y U. S. Marshal.

Appraiser's report.—Filed Dec. 20, 1866.

UNITED STATES
vs. } No. 3,592.
ST. VIGO.

To the honorable circuit court for the eastern district of Louisiana:

We, the undersigned appraisers to this honorable court, duly appointed and sworn, have the honor to report that on the twentieth day of December, 1865, we proceeded on board of the steamer Vigo for the purpose of ascertaining her value; and, after a careful and thorough examination, find that she is about six years old; built in Pittsburg, 1859. Her length is feet inches; breadth of
18 beam feet inches; depth of hold feet inches, or $177\frac{15}{100}$ tons burden. And, after a careful examination, we do hereby value and appraise the said boat in the condition in which she was in on the 30th day of June, 1865, at the sum of five thousand six hundred dollars ($5,600 00) cash, and no more.

Given under our hands this 20th day of December, 1865.

(Signed) RICHARD SWAIN.
(Signed) H. G. HEARTT.

Appraiser's bill.—Filed Dec. 20, 1865.

Steamboat Vigo and owner, to Swain and Heartt, appraisers, Dr.

For appraisement of said boat, by order of court, $5,600, at 1 p. c..... $56 00

Release bond.—Filed December 20, 1866.

19 UNITED STATES OF AMERICA, *Eastern District of Louisiana:*

Know all men by these presents, that we, Harlow J. Phelps, acting in his own name and behalf, and also as agent of James E. Phelps, claimants and owners of the steamer Vigo, &c., as principals, and Jesson T. Diboll and Dr. J. S. Copes as sureties, are held and firmly bound unto the United States of America, libellant, in the sum of eight thousand four hundred dollars, lawful money of the United States of America, for the payment whereof to the said United States we jointly and severally bind ourselves, our heirs, executors, and administrators, firmly by these presents.

Witness our respective names and seals, hereunto affixed by us at New Orleans, this 20th day of December, one thousand eight hundred and sixty-five.

Whereas an admiralty warrant was lately issued out of the honorable the circuit court of the United States of America for the eastern district of Louisiana, at the suit of the United States *vs.* the steamer Vigo, her tackle, &c., which has been seized accord-
20 ingly; but has been released from said seizure, and delivered to said Harlow J. Phelps and James E. Phelps, claimants thereof, by reason of the signing, sealing, and delivery of these

presents, said H. J. Phelps and Jas. E. Phelps having obtained leave of court to bond said property, and filed a claim thereto, which is now of record in the clerk's office of this court:

Now, the condition of the above obligation is such that, should the claimants be cast in this suit, and the said steamer Vigo, her tackle, &c., be condemned as confiscated to the United States, the said claimants and their sureties shall satisfy the judgment by paying promptly into court the amount of this obligation, it being that of the appraisement of said steamer, &c., as the same stood on the day of her seizure, viz: the 30th of June, 1865, then the foregoing obligation is to be void, but otherwise shall remain in full force and virtue.

(Signed) HARLOW J. PHELPS. [SEAL.]
(Signed) HARLOW J. PHELPS, [SEAL.]
Ag't for JAMES E. PHELPS.
(Signed) J. S. COPES. [SEAL.]
(Signed) J. T. DIVOLL. [SEAL.]

Signed and delivered in presence of—
(Signed) CH'S CLAIBORNE,
U. S. Com'ner.

21 Tesson T. Divoll and Dr. J. S. Copes, sureties on the foregoing bond, being duly sworn, say that they reside in the city of New Orleans, and are worth each the sum of eight thousand four hundred dollars over and above all their just debts and liabilities.

(Signed) J. S. COPES.
(Signed) J. T. DIVOLL.

Sworn to and subscribed before me, this 20th December, 1865.
(Signed) CH'S CLAIBORNE, [SEAL.]
U. S. Commissioner.

[5-c. stamp, cancelled]

Writ of release.—Issued December 20, 1865.

UNITED STATES CIRCUIT COURT, *Eastern District of Louisiana, ss:*
CLERK'S OFFICE, NEW ORLEANS, *Dec. 20th*, 1865.

UNITED STATES *vs.* STEAMER VIGO, &c. } No. 3,592.

22 The President of the United States of America to the marshal of the eastern district of Louisiana, or his lawful deputy, greeting:

Whereas Harlow J. Phelps and James E. Phelps, claimants of said steamer, have filed a claim thereto on behalf of themselves, on the 22d July, 1865, and which said claim is now of record in this office, you are hereby authorized to release the said steamer from seizure, and her to restore to the possession and custody of said claimants on they having given bond conditioned as required by

order of court of this date, and otherwise complying with the rules of the court, &c., and make return hereon of your doings in the premises.

Witness: Salmon P. Chase, Chief Justice of the Supreme Court of the United States, at New Orleans, this 20th day of December, A. D. 1865, and the 90th year of the independence of the United States.

(Signed) B. F. VINOT, *D'y Clerk.* [SEAL.]

23 *Marshal's return.*

Received Dec. 20th, 1865, and on the same day, month, and year released the steamboat Vigo, her tackle, &c., unto H. J. Phelps and Jas. E. Phelps, claimants of said boat, by giving them an order on the keeper of said boat to release the same to the within-named claimants or their order, and the boat, &c., was delivered to them same day.

(Signed) J. J. PREIS,
Deputy U. S. Marshal.

New Orleans, December 20th, 1865.

Notice to take testimony.—Issued December 22d, 1865.

United States circuit court, eastern district of Louisiana.

UNITED STATES *vs.* STEAMER VIGO. } 3,592.

UNITED STATES *vs.* ST'R NINA SIMMES. } No. 3,599.

To Miles Taylor, esq.:

You are hereby notified that testimony will be taken in the above-entitled cause on Thursday, the 28th day of December, 1865,
24 at the clerk's office of this court, at 12 o'clock m., on behalf of libellant.

(Signed) F. B. VINOT, *D'y Clerk.* [SEAL.]

New Orleans, December 22d, 1865.

Marshal's return.

Received December 23d, 1865, and on the same day, month, and year served a copy of the within notice on Miles Taylor, esq., personally.

December 23d, 1865.

(Signed) M. EGAN, *D'y U. S. Marshal.*

Testimony for claimants.—Filed December 28, 1865.

UNITED STATES
vs.
STEAMER VIGO. } No. 3,592.

UNITED STATES
vs.
STEAMER NINA SIMMES. } No. 3,599.

By consent of counsel the testimony of the witness is taken as applicable to both vessels.

J. F. Worley, sworn for claimants, says: I am a steamboat captain, and have been for years; I was in the Red river for the last 4
25 years.

I knew the Vigo and Nina Simmes; in 1863 I was in command of the steamer P. E. Bonford.

Lieutenant Boyce, in command of a squad of confederate soldiers, came on board the Bonford, upon which they had fired, and compelled me to come alongside of the Nina Simmes, which boat they then overhauled, put a guard aboard, and took possession of her, and carried her to Washington, Louisiana.

They had put an entire confederate crew on board of her, and made her a tender for the gunboat Queen of the West, a confederate war vessel. Capt. Roberts hid the Nina Simmes in a bayou on the Red river, about 12 miles from Old river; the confederates took the Nina Simmes by force.

Being asked did not the confederate government take any boat whose services they required, with or without the consent of the owner.

(District attorney objects to the question as irrelevant, and as leading.)

Exception sustained.

Being asked what course the confederate government pur-
26 sued with the boats they wished in their service.

(Objected on the ground of incompetency and irrelevancy.)

Exception sustained.

I knew that the Nina Simmes was taken possession of by an armed confederate force before this instance, and without the consent of the owners, and against their will.

Don't know how long the confederates kept possession of her.

I know that the owners remonstrated against the taking of their boat.

I know that the Nina Simmes had been hidden for a good while in the lakes, somewhere about Shreveport; cannot say exactly where, because I was not there.

I knew she was in the lakes, because I saw her there; I know that the Vigo was taken by the confederates, because I was there at the time; she was taken by a military force at Grand Ecore; she was raising steam at the time, in order to run her in the bayou Pierre to hide her; (this reference app'd;) they did not want her to work for

the confederacy; Thos. W. Roberts had sent for me to act as
27 pilot, and run her into bayou Pierre; this was better than two years ago; think it was two years last June; General McCulloch took possession of her, and used her to transport confederate troops from Grand Ecore to Alexandria; I don't recollect what Th's W. Roberts stated at the time he went off with General McCullock; about 40 to 50 men came aboard with General McCullock, and took her.

It was not safe for the owner to protest on such occasions against the taking of the boat.

Capt. T. W. Roberts commanded the Vigo when the confederates took her.

He manifested anxiety at the time to get her away and out of the reach of the confederacy.

Cross-examined:

I believe W. Boardman was captain of the Vigo on the trip she was overhauled and taken by the confederates.

The Nina Simmes was hidden in this bayou; I know it, because in passing there I saw her; I had gone into the bayou hunting ducks, and saw her there; I can tell whether the Nina Simmes had
28 been in the confederate service before she was overhauled; I have seen her in Red river and Mississippi river before that time.

It was in the latter part of March or beginning of April, 1863, that the Nina Simmes was overhauled by the Bonford; I was at Alexandria when she was taken a second time; this was after she had been released from tending the Queen of the West.

I can't state whether the Nina Simmes was taken the second time in the summer of 1863 or 1864.

I can't tell the time.

Russell Roberts acted as her captain a part of the time; don't know who was her clerk.

I have seen the Nina Simmes carry troops twice; first when Boyce took her, and the next time after the surrender, when she came out with confederate paroled prisoners, who had laid down arms.

I know that the Nina Simmes was carrying private freight and passengers while running in Red river.

29 I know that the Nina Simmes was in the lakes, and heard she had been hid there; I know she was not in the river.

Captain T. W. Roberts commanded the Vigo a part of the time, and I made two trips with her.

She did private business whilst running in confederate service.

I know the Vigo was running in the Red river before McCullock took her; she was then commanded by Captain Doyle, and I don't know what he did with her.

I think that Roberts bought her in 1862, in the Red river.

Think Roberts bought her at Shreveport, a military point at that time, in the fall of 1862.

(Signed) J. F. WORLEY.

Sworn to and subscribed before me, this 28th December, 1865.
(Signed) CH'S CLAIBORNE,
U. S. Commissioner.

Testimony of J. C. Gresham and Jno. C. Marsh, for libellants.—Filed December 28, 1865.

30 Testimony taken by consent in the case of the United States *vs.* steamer Vigo, No. 3,592, now pending in the United States circuit court of eastern district of Louisiana.

James A. Gresham, a witness in behalf of libellants, deposes and says:

I resided in the year 1861 in the city of New Orleans, and so still reside.

I know that the steamer Vigo was used by the Confederate States authorities as a transport in 1864 and 1865, on Red river; I have seen her loaded with corn, transporting the same on Red river; I don't know that she was hired by his owners to the confederate government; I think the service was involuntary on their part, as the confederate government pay was small; I don't know the owners, nor her captain.

Cross-examined:

I was engaged in the quartermaster department at Grand
31 Ecore, at Natchitoches, Louisiana, during the years 1864 and 1865.
(Signed) JAMES A. GRESHAM.

Sworn to and subscribed before me, this 28th December, 1865.
(Signed) F. B. VINOT, *D'y C'k.*

John C. Marsh, also a witness on the part of the libellants, after being duly sworn, deposes and says: That he resides in the city of New Orleans.

I have been a resident of Alexandria and Shreveport, Louisiana; I went there about June, 1863, and remained until about June, 1865. I have frequently seen the steamer Vigo on Red river, at Shreveport; she was running on said river between different points to Hurricanes bluffs, and from Shreveport to Alexandria; have seen her loaded with corn frequently, which I supposed was for the use of the confederate government, but do not know that it was so: I don't know that she ever was used by the confederate government.
(Signed) JOHN C. MARSH.

32 Sworn to and subscribed before me, this 28th December, 1865.
(Signed) F. B. VINOT, *D'y Clerk.*

Testimony for claimants.—Filed December 29, 1865.

UNITED STATES
vs.
STEAMER NINA SIMMES. } No. 3,599.

UNITED STATES
vs.
STEAMER VIGO. } No. 3,592.

Charles Boardman, sworn for claimants, says:

I am a steamboat pilot since June, 1862; I have been pilot on the Nina Simmes in 1863, in February; remained on her off and on during the war; I was pilot on the Nina Simmes when we carried her to Stumpy bayou; she remained there three or four months; I did not remain in her all the time; I do not know what for she was
33 taken up there; I know that she was hid up there; she has also been hidden in bayou Larto for the purpose of preventing the confederate to get hold of her; I thought the confederate wanted to make a gunboat of her; I have been on her as pilot whilst she was used by the confederates, the owners could not help themselves; they were obliged to do whatever they were ordered to do; the owners objected against their boat being used by the confederates; had they refused, they would have been put ashore, and other officers and crew put on her.

I have also been in the Vigo as pilot several times. She was also compelled to serve in the confederate service. I do not know that force was used for the Vigo by the confederates.

Was on the Vigo three or four months. The Vigo was obliged to serve the confederates the same way as the Nina Simmes. You might say that the owners who would refuse the orders of the confederates would have exposed their lives.

(Objected to by the district attorney as being too general a question.)

34 Cross-examined:

The two boats traded in the Red river whilst I was on them. They carried stores and things for the confederates. We generally had a little government freight on board each trip. We sometimes had an order for government freight, and sometimes not.

We always preferred to carry private frieght. It paid better, and whenever government freight was sent to us we carried it whether we had a special order or not. It was useless for us to disobey, we were obliged to do what they wished.

I am not aware of any resistance made by the owners to carry government freight for the confederates.

Captain Roberts was arrested one morning for the reasons that he had refused to obey orders. He had not raised steam in time desired by the confederates.

I do not know of any armed force being used against Roberts or the boat, except as stated. Roberts was commander of the

35 Nina Simmes. It was understood by all boatmen that if they refused to obey the orders of the military, force would be used.

We had government freight on the Nina Simmes when we run her into the bayou for the purpose of hiding her.

I know Captain Roberts, he was owner of the Nina Simmes. Never heard Roberts use any unfriendly expressions towards the government of the confederates that I remember.

I understood that Roberts was a part owner of the Vigo.

Captain Russell Roberts never commanded the Vigo whilst I was on her. T. W. Roberts commanded her, whom I never heard express sentiments unfavorably to the confederates.

Re-ex.:

It was not safe to use unfriendly expressions towards the confederates at that time. In several instances men have been arrested and driven out of the country for having expressed unfavorable sentiments towards the confederacy.

(Objected to last question.)

36 (Signed) CH'S BOARDMAN.

Sworn to and subscribed before me, this 29th December, 1865.

(Signed) CHS. CLAIBORNE,
U. S. Com'ner.

Notice to take testimony.—Issued January 23d, 1866.

United States circuit court, eastern district of Louisiana.

UNITED STATES
vs.
THE STEAMER VIGO. } No. 3,592.

To Miles Taylor, esq.: You are hereby notified that testimony will be taken in the above-entitled cause on Friday, the 26th day of January, 1866, at the clerk's office of this court, at 5½ o'clock p. m., on behalf of libellant.

(Signed) F. B. VINOT, *D'y Cl'k.* [SEAL.]

New Orleans, January 23d, 1866.

37 *Marshal's return.*

Received January 23d, 1866, and same day, month, and year served a copy of the within notice on Miles Taylor, esq., the attorney named herein, personally.

January 25th, 1866.

(Signed) J. J. PREIS,
Deputy U. S. Marshal.

Testimony for libellants.—Filed January 26, 1866.

UNITED STATES
vs.
STEAMER VIGO. } No. 3,592.

E. Richard, sworn for United States, says: I have seen the Vigo several times up Red river. Believe she was in the private trade. Know the owners of the boat. One of them was Mr. Phelps. Made the acquaintance of Mr. Phelps up Red river, at Natchitoches. Had conversations with him; they were not of any political character, but business conversations. Never saw the Vigo carry troops
38 or stores, except after the surrender, when she came down and had some troops on board.

The Vigo had no freight on, the only trip that I ever saw her before the surrender.

Cross-examined:

I know that Mr. Phelps was under arrest. the confederates doubted his loyalty, and he was arrested in my presence. Every confederate out there distrusted Mr. Phelps. The people generally distrusted him as not being loyal to the confederate government.

The general feeling there was that Mr. Phelps was disloyal to the confederates.

Re-ex.:

Under a new order issued by the federals, at New Orleans, Mr. Phelps had come down to the mouth of Red river with cotton, which he disposed of by receiving goods in exchange, which he sold to the planters, and gave none to the government, and for that cause the confederate arrested him.

I myself bought goods from him. He was arrested by mili-
39 tary orders, and kept under arrest for some time. I remained there for 10 days, and left Mr. Phelps under arrest.

The confederates seized his goods when they arrested Phelps.

They complained a good deal at Natchitoches at that time against Mr. Phelps, for his facilities to trade when the people there were not allowed to do so. This was about the when federal authorities allowed the trade across the lines.

I had known Mr. Phelps about a month before this complaint was made against him, and all that time.

I know that the people had already complained against him, that they did not know how he could get leave to trade. Mr. Phelps was then preparing his boat to bring some cotton out.

It was about that time every citizen tried to bring his cotton out.

I did not regard this as fixing the political status of a man for trying to bring his cotton out, as every one then tried to do so.

40 *Motion and order to open commission.—From minutes of February* 10, 1866.

UNITED STATES
vs.
STEAMER VIGO., &c, } No. 3,592.

On motion of Jno. K. Goodloe, esq., U. S. attorney, ordered that the return of the commission now on file, and under seal in this case, be opened.

Return to commission.—Filed February 10th, 1866.

A.

Commission for claimants.—Issued 25th January, 1866.

UNITED STATES
vs.
STEAMBOAT VIGO. } No. 3,592.

Circuit court of the United States for the sixth judicial circuit, holding sessions in and for the eastern district of Louisiana.

To any judge or justice of Louisiana, or United States commissioner:

41 Know ye, that reposing special trust and confidence in your integrity and ability, we hereby authorize and require you, that you call and cause to come before you A. Santini, and him duly examine on the annexed interrogatories-in-chief and cross-interrogatories, on oath, touching and concerning certain matters and things in a case now depending in the said court, wherein the United States are plaintiffs, and the steamboat Vigo is defendant; and the same examinations, so taken and reduced to writing, you certify under your hand and seal, and sent enclosed to this court without delay, to be read in evidence on the trial of said cause, and send also this writ.

Witness the honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, at the city of New Orleans, this 25th day of January, A. D. 1866, and the 90th year of the independence of the United States of America.

(Signed) CH'S CLAIBORNE, *Clerk.*
[SEAL.] By F. B. VINOT, *D'y Cl'k.*

42 *Interrogatories annexed to commission.*

UNITED STATES
vs.
STEAMBOAT VIGO. }

Interrogatories to be propounded to A. Santini, residing at Shreveport, in the State of Louisiana, the answers to which are to be used on behalf of the claimants on the trial of the above-entitled suit:

1st. What is your age? where do you reside?

2d. Are you acquainted with Capt. Russel B. Roberts and Thomas W. Roberts? If yea, how long have you known them?

3d. Do you know the steamboat Vigo? If yea, how long have you known her? Where was she most of the time during the late war?

4th. Was said steamboat in the service of the Confederate States in any manner during the late war? If yea, under what circumstances was she so employed by the confederate government, or for the confederate government?

43

5th. Was there anything said by those in charge of said steamboat in regard to the use thus made of her for or by the confederate government? If yea, state what was said, and by whom anything was said.

6th. Were there or were there not any efforts made to prevent said steamboat from being used by or for the Confederate States government? If yea, what efforts were so made? By whom were such efforts made? What were the effects of such efforts?

7th. In the above-entitled suit the United States government has proceeded against said steamboat in order to condemn and confiscate it (to the use and benefit of the United States) for aiding the rebels, or being used for or by the late Confederate States, in the prosecuting of the late war or rebellion. Now, if you know any fact or circumstance that will benefit or be of service to Captain Thomas W. Roberts and the other owners of said steamboat, you will state the same fully and in detail.

44

(Signed) MILES TAYLOR,
Proctor of Claimant.

I consent and agree that a commission issue without motion or affidavit, and be directed to any judge or justice of Louisiana or United States commissioners, whose certificate shall be full proof of his official capacity.

The United States reserving all legal exceptions to the foregoing interrogatories and answers to be made thereto, puts the following cross-interrogatories:

1st. Where was the steamer Vigo at the time of the fall of New Orleans?

2d. Was the steamer Vigo or owners paid for her services for confed. gov't? Was certificates or vouchers issued for said services?

45

3d. Who was the captain of said boat whilst she was in the confederate service? Who was clerk of her?

4th. Has the Vigo changed owners since August 16, 1861?

5th. Did the Vigo carry a flag? If so, was it the flag of the United States of America, or the flag of the so-called Confederate States of America?

6th. Who was the owner or owners of said boat? Were they Union men, or friends to the confederate government?

7th. Are the facts stated by you, in reply to the interrogatories-in-chief, stated from your personal knowledge, or from information of others? State what facts are within your knowledge, and what from information?

8th. If you state that the Vigo run under military orders, state by whom they were issued, where dated or given.

9th. If you state that compulsion or actual force was used
46 to secure the services of the Vigo for confederate government, state the particulars of such force, and how you know it.

10th. What has been your employment and occupation since first February, 1861.

(Signed) JNO. K. GOODLOE,
United States Attorney.

Depositions of A. Santini, taken under foregoing commission.

Depositions of witness produced, sworn, and examined on the days hereinafter stated, at the office of Moncure and Flanagan, in the city of Shreveport, State of Louisiana, under and by virtue of the annexed commission, issued out of the circuit court of the United States for the sixth judicial circuit, holding sessions in and for the eastern district of Louisiana, to take depositions in a certain cause pending and at issue between the United States and the steamboat Vigo.

A. Santini, who being first duly sworn on the Holy Bible, on
47 this 1st day of February, in the year of our Lord 1866, doth depose and say as follows:

First. To the first interrogatory he saith: He is twenty-nine years of age; resides in Shreveport, Louisiana.

Second. To the second interrogatory he saith: That he is acquainted with Captain Russell B. Roberts and Thomas W. Roberts, and has known them since the last of A. D. 1862, or the first of A. D. 1863.

Third. To the third interrogatory he saith: That he knows the steamboat Vigo. Has known her since early in the fall of A. D. 1862, when she was owned by Mr. R. Doyle; witness was then employed on her as watchman, in which capacity he acted until October, A. D. 1864. She was purchased early in A. D. 1863 by R. B. and T. W. Roberts. For most of the time during the late war she plied between Shreveport and Alexandria, Louisiana, as a passenger and freight packet. For a short period during the year 1863 she
48 ran in the Ouachita river, between Trinity and Monroe, Louisiana, as a passenger and freight packet.

Fourth. To the 4th interrogatory he saith: She was never regularly in the confederate service during the late war, but was sometimes pressed into the said service to transport freight between Shreveport and Alexandria, Louisiana. The said freight was transported in the same manner as freight for private individuals, and the said steamboat was never fully loaded with the freight of the late so-called confederate government, and, in fact, no freight was ever taken for said government except by compulsion, for the reasons that the amount allowed for transporting said freight was greatly below the amount paid by private individuals.

Fifth. To the fifth interrogatory he saith: The officers and owners of said steamboat complained greatly because they were compelled to transport freight for the said government, because they were
49 unwilling to be employed by the government, and because the

price allowed them was inadequate, and they complained that even that inadequate price was not paid them.

Sixth. To the sixth interrogatory he saith: There were efforts made by the officers and owners of said boat to prevent her being used for the said government. Upon one occasion the said steamboat was concealed in Catahoula lake, above Trinity, and open another in Alabama bayou, below Alexandria. Upon the former occasion the said government sent the steamer Tucker to Catahoula lake after her, but the captain and other officers of the steamboat Vigo, fearing she would be sent for, had left her, and there being no officers or sufficient crew aboard, they failed to get her. Witness and a few deck-hands were aboard at the time, and in charge of said steamboat Vigo, upon the latter occasion, while concealed in Alabama bayou, below Alexandria. No efforts were made by the said government to get her, but she remained there and other points concealed for about six months. She was not in the service of the Confederate
50 States at all from June, A. D. 1813, until October, A. D. 1864, at which time witness went to Ohio with Captain J. W. Roberts.

Seventh. To the seventh interrogatory he saith: That the said steamboat Vigo was used by the Confederate States government only as above stated; that beyond that she was never used in aiding the rebels, and she was used as above stated against the will and consent of the owners.

T. W. Roberts and R. B. Roberts are natives of the State of Ohio, the former still residing there, and both are known to witness to have been earnest Union men during the late war.

Cross-examination:

First. To the first cross-interrogatory he saith: Don't know:

Second. To second cross-interrogatory he saith: Don't know to his own knowledge whether she was paid or not, or whether certificates or vouchers were issued for her services, but witness has often
51 heard her owners complain that they received nothing for their services.

Third. To the third cross-interrogatory he saith: That during the period while he was connected with the steamboat Vigo, T. W. Roberts acted as captain a portion of the time, said Roberts acted as clerk also, and a Mr. Hotchkiss acted as clerk during the remainder of the time.

Fourth. To the fourth cross-interrogatory he saith: He knows nothing of any change of ownership of said steamboat Vigo except the purchase by T. W. and R. B. Roberts of said steamboat early in A. D. 1863.

Fifth. To the fifth cross-interrogatory he saith: She never carried any flag except one with the name of the boat on it, called a "streamer."

Sixth. To the sixth cross-interrogatory he saith: When he first knew the steamboat Vigo, R. Doyle was owner, afterwards T. W. and R. B. Roberts were the only owners witness knew anything

52 about. T. W. and R. B. Roberts always expressed themselves as Union men in conversation with witness.

Seventh. To the seventh cross-interrogatory he saith: The answers to the interrogatories-in-chief are made upon the personal knowledge of witness, except where in the answers themselves the said facts are stated to be upon information of others.

Eighth. To the eighth cross-interrogatory he saith: That the steamboat Vigo never run regularly under any military orders as far as witness knows. For the services rendered to the Confederate States government witness refers to his answer in the fourth direct interrogatory. And the services referred to were renewed by order of the quartermasters at Shreveport and Alexandria, Louisiana.

Ninth. To the ninth cross-interrogatory he saith: He has frequently seen the orders from the quartermasters at Shreveport and
53 Alexandria, commanding the captain of the steamer Vigo to take charge of freight for said government, and upon one occasion the said steamboat was fired into to compel her to "round to" and take in what one of said quartermasters desired to put aboard.

Tenth. To the tenth cross-interrogatory he saith: He was a farmer until A. D. 1862, and from that time until October, 1864, has been steamboating.

(Signed) A. SANTINI.

Sworn to and subscribed before me, this the 1st day February, A. D. 1866.

(Signed) H. E. ALLEN,
Justice of the Peace of the State of Louisiana in and for the Caddo Parish.

I, Henry E. Allen, the undersigned, justice of the peace of the State of Louisiana in and for the parish of Caddo, do certify that I have caused A. Santini, witness hereinbefore named and examined, to appear before me at the time and place above named, and after publicly and solemnly swearing him to tell the truth, the whole truth, and nothing but the truth, in answer to the annexed
54 direct and cross-interrogatories, I then and there proceeded to examine him by propounding to him the said direct and cross-interrogatories, and reducing in my presence and that of the witness the answers thereto in writing with my own hand. I then caused him to signed his depositions in my presence as already stated.

In testimony whereof I hereunto set my hand on this the 18th day of February, A. D. 1866.

(Signed) HENRY E. ALLEN,
Justice of the Peace, State of Louisiana, in and for the Parish of Caddo.

Amended answer.—Filed March 5th, 1866.

UNITED STATES
vs.
THE STEAMER VIGO. } No. 3,592.

United States circuit court, sixth circuit, eastern district of Louisiana.

Now into court come Thomas W. Roberts, Harlow J. Phelps,
55 and James E. Phelps, claimants, by their counsel, and file this amended answer to the libel and complaint of the libellant:

That after the surrender of General E. Kirby Smith (commanding the confederate forces of the trans-Mississippi department) and his forces to Major General Canby, the said steamboat Vigo was permitted to proceed to the port of New Orleans, without molestation, and in consequence of the terms of the aforesaid surrender, and the 4th article of General Orders No. 61, published by Major General Canby, commanding the military division of west Mississippi, on the 26th of May, 1865, and the general principles of international law, the steamboat Vigo is exempt from seizure and confiscation under the act of Congress of 6th August, 1861, relied on by the libellant in this case.

Wherefore claimants pray this honorable court to pronounce against the libel libellants demand, that the said libel be dismissed, and that this court decree right and justice in the premises.

56 (Signed) R. B. ROBERTS,
Agent for Claimants.

(Signed) MILES TAYLOR, *Proctor.*

Sworn to and subscribed before me, this 5th March, 1866.
(Signed) F. B. VINOT, *D'y Clerk.* [SEAL.]

Plea of pardon.—Filed March 5th, 1866.

UNITED STATES
vs.
STEAMBOAT VIGO. } No. 3,592.

United States circuit court, sixth circuit, eastern district of Louisiana.

And the said Thomas W. Roberts, a resident of the State of Ohio, by his attorney, now comes into court and says: That the plaintiff ought not to have and maintain this suit, because the President of the United States did, on the 8th day of December, 1863, issued his proclamation granting full pardon and amnesty to the persons therein named, and not therein excepted, upon conditions therein
57 fully specified and detailed, viz:

1st. That each and every person should take the oath mentioned in said proclamation.

2nd. And each and every person taking the said oath should not again violate the same.

3rd. That each person taking said oath should not be included within or under the exceptions mentioned in said proclamation.

Now the said Thomas W. Roberts shows that he does not come under any of the exceptions mentioned in said proclamation, and that he has taken and subscribed said oath, viz: on the November, 1864, as will appear by reference to the certificate annexed to a like plea in the case of the United States *versus* the steamboat Nina Simmes, No. on the docket of this court; and that since he took said oath he has kept and maintained the same inviolate, and by reason thereof he is entitled to a full pardon, "with restoration of all rights of property, except as to slaves, and in property cases
58 where rights of third parties shall have intervened," he hereby specially refers to and makes said proclamation a part hereof.

Wherefore, by reason of the foregoing, the said Thomas W. Roberts prays that this action be dismissed, and the aforesaid steamboat Nina Simmes proceeded against therein be dismissed and discharged from all further proceedings specified in said libel.

(Signed) R. B. ROBERTS,
Agent for Claimants.

(Signed) MILES TAYLOR, *Proctor.*

[Sworn to and subscribed before me, this 5th March, 1866.

(Signed) F. B. VINOT, *D'y Clerk.* [SEAL.]

Order continuance.—From minutes of March 26, 1866.

UNITED STATES
vs.
THE STEAMER VIGO. } No. 3,592.

By consent the trial of this cause is postponed until to-morrow, at 11 a. m.

59 *Note of evidence.—Filed March* 27, 1866.

UNITED STATES
vs.
STEAMER VIGO. } No. 3,592.

Defendant offered commission marked A, and the testimony filed December 28 and 29, 1865.

Hearing and submission of cause.—From the minutes of March 27, 1866.

UNITED STATES
vs.
STEAMER VIGO. } No. 3,592.

This cause came up for trial, district attorney for libellants, Miles Taylor and G. Schmidt for defendant.

And after hearing pleadings, evidence, and counsel, the court took time to advise.

60 *Final decree dismissing libel, &c.—From judgment docket book 5, fo. 13.*

Circuit court of the United States, sixth circuit and eastern district of Louisiana, April term, 1866.

NEW ORLEANS, *Saturday, June* 30, 1866.

Court met pursuant to adjournment. Present: Hon. Edw. E. H. Durell, district judge.

UNITED STATES *vs.* THE STEAMER VIGO. } No. 3,592.

For reasons orally assigned by the court in the case of the United States *versus* the steamer Frolic, No. 3,595 of the docket—

It is ordered, adjudged, and decreed that the libel be dismissed, and the property seized be restored to the claimant upon payment of all costs, and for a fee of $300 to the dist. att'y.

Judgment rendered June 30, 1866.

Judgment signed June 30, 1866.

(Signed) E. H. DURELL, *Judge.*

61 *Petition of appeal.—Filed July 6th, 1866.*

United States circuit court.

UNITED STATES *vs.* THE STEAMER VIGO. } No. 3,592.

To the hon. the judges of the circuit court of the United States for sixth circuit and eastern district of Louisiana:

The petition of Jno. K. Goodloe, U. S. attorney, in the name and in the behalf of the United States of America, libellant herein, respectfully represents:

That a final sentence and decree was entered on the 30th day of June, 1866, in the above-entitled suit, in said circuit court for the east. dist. of La., in and by which said final sentence and decree it was ordered, adjudged, and decreed that the libel herein be dismissed and the property seized be restored to the claimants; that said final sentence and decree is adverse to libellant and to his manifest injury and prejudice; that the matter in controversy exceeds in value

62 the sum of two thousand dollars; that your petitioner, in behalf as aforesaid, feels aggrieved by the rendition of said final decree, and is advised that the same is erroneous and ought to be reversed.

Wherefore petitioner, in behalf of libellant, doth hereby appeal from said decree to the Supreme Court of the United States, returnable on the first Monday of December next, and prays this honorable court to grant him a suspensive appeal from said final decree, the same to operate as a supersedeas, and that said final sentence and

decree may be reversed, and such other decree thereupon made as to said Supreme Court shall seem just, and that a transcript of the record and proceedings in this cause, duly authenticated, may be sent up to the said Supreme Court without delay.

(Signed) C. S. KELLOGG,
Ass't U. S. Attorney.

Order.

63 An appeal to operate as a supersedeas is allowed in this case as prayed for, returnable to the Supreme Court of the United States the first Monday in December next, the appellants being by law dispensed from giving bond and security in judicial proceedings.

July 6th, 1866.

(Signed) E. H. DURELL, *Judge.*

64 United States of America, circuit court of the United States, sixth circuit and eastern district of Louisiana.

CLERK'S OFFICE.

I, Charles Claiborne, clerk of the circuit court of the United States for the sixth circuit and eastern district of Louisiana, do hereby certify that the foregoing 63 pages contain and form a full, complete, true, and perfect transcript of the record and proceedings had, together with all the evidence adduced on the trial of the case of the United States *vs.* the steamer Vigo, her tackle, apparel, &c., No. 3,592 of the docket, so far as the same now remain of record or on file in said court.

Witness my hand and the seal of said court, at the city of New Orleans, this 18th day of August, A. D. 1866.

[SEAL.] CH'S CLAIBORNE, *Clerk.*

5-ct. revenue stamp, cancelled.

I, E. H. Durell, United States judge for the eastern district of Louisiana, do hereby certify that Charles Claiborne, whose name is signed to the above certificate as clerk of the circuit court of the United States for the sixth circuit and eastern district of Louisiana, was at the time of signing said certificate, and is now, the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand and seal at the city of New Orleans, in said district, this 18th day of August, A. D. 1866.

E. H. DURELL, *Judge.*

5-ct. revenue stamp, cancelled.

65 THE UNITED STATES OF AMERICA,
Eastern District of Louisiana:

The President of the United States to Thomas W. Roberts, claimant and defendant, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington on the first Monday of December next, pursuant to a petition and order of appeal filed in the clerk's office of the circuit court of the United States for the 6th circuit and eastern district of Louisiana, to answer the appeal taken by the United States of America in this cause, and that you show cause, if any there be, why the judgment rendered against the said United States, as in said petition mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this seventh day of July, in the year of our Lord one thousand eight hundred and sixty-six.

E. H. DURELL, *Judge.*

Marshal's return.

Received July 12th, 1866, and on the same day, month, and year served a copy of the within citation on Tho's W. Roberts, the defendant named herein, by leaving same in the hands of Miles Taylor, esq'r., attorney for said Roberts, who was absent at the time of service.

New Orleans, July 13, 1866.

M. EGAN,
D'y U. S. Marshal.

66 THE UNITED STATES OF AMERICA,
Eastern District of Louisiana:

The President of the United States to James E. Phelps, claimant and defendant, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington on the first Monday of December next, pursuant to a petition and order of appeal filed in the clerk's office of the circuit court of the United States for the 6th circuit and eastern district of Louisiana, to answer the appeal taken by the United States of America in this cause, and that you show cause, if any there be, why the judgment rendered against the said United States, as in said petition mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this 7th day of July, in the year of our Lord one thousand eight hundred and sixty-six.

E. H. DURELL, *Judge.*

Marshal's return.

Received July 12th, 1866, and on the same day, month, and year served a copy of the within citation on Jas. E. Phelps, the defendant named herein, by leaving same in the hands of Miles Taylor, esq'r., attorney for said Phelps, who was absent at the time of said service.

New Orleans, July 13, 1866.

M. EGAN,
D'y U. S. Marshal.

67 THE UNITED STATES OF AMERICA,
Eastern District of Louisiana:

The President of the United States to Harlow J. Phelps, claimant and defendant, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington on the first Monday of December next, pursuant to a petition and order of appeal filed in the clerk's office of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, to answer the appeal taken by the United States of America in this case, and that you show cause, if any there be, why the judgment rendered against the said United States, as in said petition mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this 7th day of July, in the year of our Lord one thousand eight hundred and sixty-six.

E. H. DURELL, *Judge.*

Marshal's return.

Received July 12th, 1866, and on the same day, month, and year served a copy of the within citation on Harlow J. Phelps, the defendant named herein, by leaving same in the hands of Miles Taylor, esq'r., attorney for said Phelps, who was absent at the time of said service.

New Orleans, July 13th, 1866.

M. EGAN,
D'y U. S. Marshal.

In the Supreme Court of the United States.

DECEMBER TERM, 1868.

UNITED STATES, appellants,
vs.
THE STEAMER VIGO. } No. 33.

Appeal from the Circuit Court of the United States for the eastern district of Louisiana.

STATEMENT FOR THE UNITED STATES.

In this case the vessel was libeled as a forfeiture under the provisions of the act of August 6, 1861.

The libel, among other things, charges that the property was knowingly employed by her owners in aiding, abetting, and promoting the late insurrection; that it was knowingly used by them in aiding and abetting persons engaged in said insurrection; that they knowingly consented to the use of the same for the purposes aforesaid; and that they, or their agents or employees, supposed the same to be so used, etc.; whereby the property became forfeited to the United States under said statute. (Record, p. 2.)

The steamer is claimed by Russell B. Roberts, as agent of Thomas W. Roberts, the alleged owner of three-fourths of same, and by James E. and Harlow

J. Phelps, as owners of the other one-fourth, (Record, p. 5,) who in their answer deny generally the allegations aforesaid, but admit that the steamer was occasionally employed for the purpose of carrying supplies and provisions for the use of the confederate forces, and twice employed for the purpose of carrying confederate troops, during the existence of the late rebellion, which employment they, however, aver was against their will and consent, etc., and that the same was brought about by force and compulsion on the part of the so-called confederate government, and against their will and desire, etc. (Record, p. 6.) In an amended answer they also claim that the property was protected from seizure and condemnation by the convention of May 26, 1865, between Generals Smith and Canby. (Record, p. 23.) And furthermore, a plea of pardon and amnesty under the proclamation of the President, of December 8, 1863, is filed in behalf of one of the claimants. (Record, p. 23.)

It will be observed that besides the admission of claimants that the steamer was at times employed in the rebel service during the rebellion, we have the direct testimony of Gresham that she was used as a transport on Red river by the confederate authorities in 1864 and 1865. (Record, p. 14.) During this period it is not shown by the evidence that any actual force was exercised by those authorities, or that they made use of any threats and intimidation, as against either the owners personally or their agents and employees, in obtaining the services of the boat.

Boardman, who was employed on her as a pilot, says he is "not aware of any resistance made by the owners to carry government freight by the confederates," (Record, p. 15,) and that he never heard T. W. Roberts, who commanded her, "express sentiments unfavorably to the confederates." (Record, p. 16.)

On the other hand, Worley states that the Vigo

was taken by a military force at Grand Ecore, (Record, p. 12;) but this must have happened in 1863; and Santini testifies that on one occasion she was fired into to compel her to round to and take in what a quartermaster desired to put aboard. (Record, p. 22.) The latter, however, states that the steamer was not in the confederate service at all from June, 1863, to October, 1864, when he went to Ohio, (Record, p. 21,) so that the firing to which he refers must have transpired some time prior to June, 1863. No other instances of compulsion are mentioned in the testimony, and it is shown that neither of these occurred during the period when Gresham swears she was in rebel service.

Thus the plea of compulsory employment is not sustained by the proofs; and as to the other defences, it is sufficient to observe that neither of them appear to meet the present case.

It is accordingly submitted that upon the facts disclosed by the record the steamer Vigo was clearly liable to forfeiture under the act of August 6, 1861.

WM. M. EVARTS,
Attorney General.
J. HUBLEY ASHTON,
Ass't Attorney General.

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